

701—231.16(423) State sales tax phase-out on energies. Beginning January 1, 2002, the state sales tax is phased out at the rate of 1 percent per year on the sales price from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings, apartment units, and condominiums for human occupancy.

Local option taxes are not included in the phase-out of the state sales tax.

This phase-out of tax does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

231.16(1) Definitions. The following definitions are applicable to this rule:

“Energy” means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

“Fuel” means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. “Fuel” includes propane, heating fuel, and kerosene. However, “fuel” does not include blended kerosene used as motor fuel or special fuel.

“Metered gas” means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

“Residential dwelling” means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a dwelling that is used strictly for residential purposes will fall within the phase-out provisions. A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

231.16(2) Schedule for phase-out of tax. State sales tax on energies will be phased out at the rate of 1 percent per year based on the following schedule:

a. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2002, through December 31, 2002, the rate of state tax is 4 percent of the sales price.

b. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2003, through December 31, 2003, the rate of state tax is 3 percent of the sales price.

c. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2004, through December 31, 2004, the rate of state tax is 2 percent of the sales price.

d. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2005, through December 31, 2005, the rate of state tax is 1 percent of the sales price.

e. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2006, the rate of state tax is 0 percent of the sales price.

231.16(3) *Determination of tax rate.* Determination of the rate of state tax to be imposed on a transaction depends on the type of energy that is being purchased.

a. Electricity or metered natural gas. If the energy being purchased is either electricity or natural gas, then the rate of tax is governed by either the billing date or meter reading date. For example, ABC natural gas company sends out bills with a billing date of December 31, 2002, to qualifying residential customers. However, the bills to these qualifying customers are not placed in the United States mail until January 2, 2003. Based on the foregoing facts, the state sales tax to be imposed on the bills is 4 percent. Four percent is the tax rate imposed at the time of the billing date on the gas bills sent to the customers.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for the phase-out provisions of metered gas or electricity. For example, a utility company issues a billing for metered gas on December 28, 2001, to a customer and the customer loses the billing. The customer calls the utility company on January 10, 2002, to report the lost billing and to request a new billing. The utility company issues a new billing with a billing date of January 12, 2002, to the customer. The original billing date issued to the customer is determinative for the tax rate to be imposed. As a result, a 5 percent state tax rate should be imposed on the billing because the original billing date was prior to January 1, 2002.

b. Fuel and heating oil. The proper rate of tax to be imposed for the sale, furnishing or service of fuel including propane is governed by the date of delivery of the fuel to the customer. Consequently, if a farmer purchases propane for home heating by executing an agreement and paying for the propane in October 2002 but the propane is not delivered to the farmer until January 2003, the rate of state sales tax that should be imposed on the transaction is 3 percent.

231.16(4) *Qualifying and nonqualifying usage.* Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations, the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. Reference 701—subrules 15.3(4) and 15.4(5) for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. Reference 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the sales price including the usage of the security lights is not subject to the phase-out of state sales tax and is subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

231.16(5) *Reporting over the phase-out period.* Sales/use tax returns will be filed on the same basis as they are currently filed. During each phase-out period, the entire sales price from sales should be reported on the return. The appropriate state sales tax rate for the tax period will be applied by claiming the phased-out portion of the tax rate as a deduction on the return.

The sales prices for local option taxes are also to be reported in their entirety and computed by applying the appropriate local option tax rate.

The following are examples regarding how state sales and local option taxes should be reported:

EXAMPLE 1. Reporting of tax by an energy provider:

Sales price for a tax period in 2002	\$100,000
Phase-out (20,000 for the first year, 40,000 for the second year, etc.)	<u>20,000</u>
Taxable sales	80,000
State tax at 5% (to compute state sales tax due)	4,000
Sales price to be reported for local option	100,000
Local option tax rate (assuming a 1% local option tax rate)	<u>× 1%</u>
Local option tax due	1,000
Total tax due (local option and state sales tax)	\$5,000

EXAMPLE 2. Reporting of tax on an individual billing:

Monthly charge during a billing or delivery period in 2002	\$400
State tax rate	<u>× 4%</u>
State tax due	16
Sales price for local option tax	400
Local option tax rate	<u>× 1%</u>
Local option tax due	4
Total tax (local option and state sales tax)	\$20

This rule is intended to implement 2005 Iowa Code section 423.3(68).